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PATENT

APPLICATION 09/843,289

ATTORNEY DOCKET 2005P12928US (1120-005)

Office Action fails to even allege that any applied portion of any relied upon reference teaches, "wherein the subscriber is identified using a media access control address".

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 52, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 52, in such a manner so as to arrive at the claimed subject matter of claim 52. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 11, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

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d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 52 is respectfully requested.

29. Claim 53

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 53 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, “wherein the subscriber is identified using an IP address”.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 53, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 53, in

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such a manner so as to arrive at the claimed subject matter of claim 53. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 11, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 53 is respectfully requested.

30. Claim 54

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

Claim 54 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "providing a subscribed channel list for the subscriber that indicates channels which the subscriber is permitted to access". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. PROGRAMS" (emphasis added). Applicant respectfully submits that a "list" of "programs" does not teach "channel list" according to how the word "channel" would be construed "in light of the specification" "by one of ordinary skill in the art". Moreover, the applied portion of Rogers is silent regarding any "subscribed" "list" whatsoever.

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The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 54, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 54 in such a manner so as to arrive at the claimed subject matter of claim 54.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 54 is respectfully requested.

31. Claim 55

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

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b. Missing Claim Limitations

Claim 55 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "wherein data for a channel is received at the computer system and forwarded to the subscriber unit". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. PROGRAMS" (emphasis added). Applicant respectfully submits that a "list" of "programs" does not teach a "channel" according to how the word "channel" would be construed "in light of the specification" "by one of ordinary skill in the art".

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 55, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 55 in such a manner so as to arrive at the claimed subject matter of claim 55.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 55 is respectfully requested.

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32. Claim 56**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Acharya, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 56, in such a manner so as to arrive at the claimed subject matter of claim 56. Regarding the proffered combination of Day, Rogers, and Acharya the present Office Action states, at Page 13, "it would have been obvious to an artisan to apply Acharya's teaching to Rogers's system with the motivation being to provide transmits data as a series of variable length packets, each having a circuit number that identifies its source and destination address."

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 56 is respectfully requested.

33. Claim 57**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

Claim 57 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "wherein the request is sent in response to the subscriber requesting to view the list". Since claim 57 depends from claim 46, "the list" is a "list of available channels". Instead of teaching this claimed subject matter, Rogers allegedly illustrates, at Fig. 7a, step 706,

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“SELECTED PROGRAM DISPLAYED IN WINDOW” (emphasis added). Applicant respectfully submits that a “program” as recited in step 706 does not teach a “list of available channels”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 57, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 57 in such a manner so as to arrive at the claimed subject matter of claim 57.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 57 is respectfully requested.

34. Claim 58

a. Inherency

The present Office Action states, regarding Rogers, that “receiving from a subscriber unit a request for a list of available channels (programs), the request including information

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identifying a subscriber (fig. 7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added)." See, Page 3. No evidence has been presented that the admittedly "missing descriptive material is 'necessarily present'" in Rogers. Applicant respectfully requests provision of evidence supporting the assertion that "receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig. 7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added)."

To the extent that the present Office Action or any future Office Action intends to rely on inherency to support a claim rejection, Applicant respectfully traverses, respectfully requests provision of proper evidence supporting such rejection, and respectfully requests a detailed explanation of how the "missing descriptive material is necessarily present, not merely probably or possibly present", in any prior art reference cited to support such rejection.

b. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

c. Missing Claim Limitations

Claim 58 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "receiving from a subscriber unit a request for a **listing of available channels**, the request being sent in response to a subscriber indicating to view the listing, the request being sent using HTTP protocol". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. PROGRAMS" (emphasis added). Applicant respectfully submits that a "list" of "programs" does not teach "a listing of available channels" according to how the word "channel" would be construed "in light of the specification" "by one of ordinary skill in the art".

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

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Claim 58 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "sending to the subscriber unit a response with an indication of the identified channels, the response being sent using HTTP protocol and **identifying the multicast group assigned to each identified channel**".

In addition, as amended, claim 58 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "the response managed via IP multicast capable TCP/IP software".

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

d. No Reasonable Expectation of Success

The Office Action recites, regarding combining applied portions of Rogers and Day, at Pages 3-4, "it would have been obvious to an artisan to apply Day's teaching to Roger's system with the motivation being to enable user to access or schedule a multimedia data presentation in a more efficient and reliable manner"

One skilled in the art would not have a reasonable expectation of success regarding this combination. Specifically, Rogers states, at col. 9, lines 34-49:

[a] TV tuner board 464 can also be provided within broadband data switch 450 for connection to a cable television source. The input broadcast television signal is split into 5 separate signals, one for each tuner. In various embodiments, TV tuner board includes a signal splitter and 5 separate TV tuners each of which can independently tune to a different channel based on commands received from controller unit 457. These commands can be generated by individual users at

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teleconferencing stations such as those shown in FIG. 3. The TV signals can be forwarded to individual user's desktops over existing telephone lines through modem/diplexers 451 through 453. This allows each user to watch a broadcast or cable TV program at his desk over existing telephone lines and tune to any of various stations.

Day states, at col. 5, lines 48-65:

[n]etwork implementation 40 of the present invention can be used to deliver real-time (streamed) video/audio to any network-connected clients, including those on the Internet or an intranet, using standard LAN technology with TCP/IP and FTP.

An Internet 'web browser' can be used to select a video for viewing (such as a short clip or commercials, or a full-length film). A variety of encoding formats can be supported for delivery of video streams, including RTP, TCP, HTTP and IP multicast. A presentation formatter server can provide presentation format pages to initiate a common gateway interface (CGI) program used to facilitate client requests. The presentation formats might include specific video selection (where the name or other access parameter of a desired file is already known), video-on-demand (allowing a client to select an asset from a dynamically generated list), and joining multicast sessions (previously scheduled video broadcasts to a group of clients, such as students enrolled in a distance-learning class).

The present Office Action presents no evidence that one having ordinary skill in the art would have found that the "TV tuner board 464" of Rogers would be able to recognize or operatively utilize "video streams, including RTP, TCP, HTTP and IP multicast" "formats" or "standard LAN technology with TCP/IP and FTP".

Thus, one skilled in the art would not have had a reasonable expectation of success in combining the applied portions of Rogers with the applied portions of Day to arrive at the claimed subject matter of claim 58.

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e. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day and Rogers, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 58, in such a manner so as to arrive at the claimed subject matter of claim 58. Regarding the proffered combination of Day and Rogers the present Office Action states, at Pages 3 and 4 "it would have been obvious to an artisan to apply Day's teaching to Roger's system with the motivation being to enable user to access or schedule a multimedia data presentation in a more efficient and reliable manner."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

Consequently, Applicant respectfully requests withdrawal of the obviousness rejections of claim 58.

f. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 58 is respectfully requested.

35. Claim 59

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 59, in

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such a manner so as to arrive at the claimed subject matter of claim 59. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 11 "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system to provide conference over IP."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 59 is respectfully requested.

36. Claim 60

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Hari, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 60, in such a manner so as to arrive at the claimed subject matter of claim 60. Regarding the proffered combination of Day, Rogers, and Hari the present Office Action states, at Pages 7-8, "it would have been obvious to an artisan to apply Hari's teaching Rogers's system with the motivation being to provide one user requesting a video."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

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For at least these reasons, a reconsideration and withdrawal of the rejection of claim 60 is respectfully requested.

37. Claim 61

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

Claim 61 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. PROGRAMS". Applicant respectfully submits that the applied portion of Rogers is silent regarding a "content provider". Accordingly, Applicant submits that Rogers does not teach, "wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**".

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 61, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 61 in such a manner so as to arrive at the claimed subject matter of claim 61.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 61 is respectfully requested.

38. Claim 62

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

Claim 62 states, *inter alia*, yet the applied portions of Kalva fail to teach, "wherein an indication that a channel is made available by a content provider is sent using a session announcement protocol". Applicant respectfully submits that the applied portion of Kalva does not even mention a "session announcement protocol".

The applied portions of the remaining relied upon references fail to cure at least these deficiencies of the applied portions of Kalva.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 62, and consequently the Office Action fails to establish a *prima facie* case of obviousness.

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Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action presents **no proof, and notably no evidence whatsoever**, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

Moreover, the present Office Action presents **no proof, and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.” Instead, the present Office Action merely asserts, at Page 8, “it would have been obvious to an artisan to apply Hari’s teaching to Rogers’s system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed.” Applicant respectfully submits that this unfounded assertion fails to provide any evidence of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed” subject matter.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 62 is respectfully requested.

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39. Claim 63

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness. Since claim 63 depends from claim 61, Applicant incorporates by reference each traversal regarding claim 61, *supra*.

b. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Hari, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 63, in such a manner so as to arrive at the claimed subject matter of claim 63. Regarding the proffered combination of Day, Rogers, and Hari the present Office Action states, at Page 9, "it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 63 is respectfully requested.

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40. Claim 64**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

b. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 64, in such a manner so as to arrive at the claimed subject matter of claim 64. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 11, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 64 is respectfully requested.

41. Claim 65

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

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The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Alexanders, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 65, in such a manner so as to arrive at the claimed subject matter of claim 65. Regarding the proffered combination of Day, Rogers, and Alexanders the present Office Action states, at Page 6, "it would have been obvious to provide data over ATM network unicastly."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 65 is respectfully requested.

42. Claim 66

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 66 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, "wherein the channel source address is an ATM virtual path and transmission circuit".

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the

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Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 66, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Alexanders, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 66, in such a manner so as to arrive at the claimed subject matter of claim 66. Regarding the proffered combination of Day, Rogers, and Alexanders the present Office Action states, at Page 6, "it would have been obvious to provide data over ATM network unicastly."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 66 is respectfully requested.

43. Claim 67

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

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The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 67, in such a manner so as to arrive at the claimed subject matter of claim 67. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 12, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide a conference to only the requested client."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 67 is respectfully requested.

44. Claim 68

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 68 in such a manner so as to arrive at the claimed subject matter of claim 68.

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 68 is respectfully requested.

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45. Claim 69

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

Claim 69 states, *inter alia*, "wherein the subscriber unit is connected to the computer system via a DSL connection." The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Hari, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 69, in such a manner so as to arrive at the claimed subject matter of claim 69. Regarding the proffered combination of Day, Rogers, and Hari the present Office Action states, at Page 9, "it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed." As a substantive matter, Applicant respectfully submits that this unfounded assertion appears to have no relevance to the claimed subject matter.

Also, Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 69 is respectfully requested.

46. Claim 70**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

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b. Missing Claim Limitations

Claim 70 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, “wherein an available channel is a channel whose data is currently being multicasted”. The present Office Action attempts, at Page 5, to apply a nonexistent portion of Rogers in the rejection of claim 70 (“page 310, right column, second paragraph”). Applicant respectfully submits that the present Office Action fails to provide any evidence that any applied portion of any relied upon reference teaches “wherein an available channel is a channel whose data is currently being multicasted”.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 70, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 70 in such a manner so as to arrive at the claimed subject matter of claim 70.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 70 is respectfully requested.

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47. Claim 71**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

Claim 71 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "wherein data for a channel is received at the computer system and forwarded to the subscriber unit". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. PROGRAMS" (emphasis added). Applicant respectfully submits that a "list" of "programs" does not teach a "channel" according to how the word "channel" would be construed "in light of the specification" "by one of ordinary skill in the art".

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, as **attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 71, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 71 in such a manner so as to arrive at the claimed subject matter of claim 71.

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d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 71 is respectfully requested.

48. Claim 72

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Acharya, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 72, in such a manner so as to arrive at the claimed subject matter of claim 72. Regarding the proffered combination of Day, Rogers, and Acharya the present Office Action states, at Page 13, "it would have been obvious to an artisan to apply Acharya's teaching to Rogers's system with the motivation being to provide transmits data as a series of variable length packets, each having a circuit number that identifies its source and destination address."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 72 is respectfully requested.

49. Claim 73

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

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The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 73, in such a manner so as to arrive at the claimed subject matter of claim 73. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 12, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide a conference to only the requested client."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 73 is respectfully requested.

50. Claim 74

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

Claim 74 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "wherein the request is sent in response to the subscriber requesting to view the **listing**". Since claim 74 depends from claim 58, "the listing" is a "listing of available channels". Instead of teaching this claimed subject matter, Rogers allegedly illustrates, at Fig. 7a, step 706, "**SELECTED PROGRAM DISPLAYED IN WINDOW**" (emphasis added). Applicant respectfully submits that a "program" as recited in step 706 does not teach a "listing of available channels".

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The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 74, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under KSR. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 74 in such a manner so as to arrive at the claimed subject matter of claim 74.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 74 is respectfully requested.

51. Claim 75

a. Inherency

The present Office Action states, regarding Rogers, that "receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig. 7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added)." See, Page 3. No evidence has been presented that the admittedly "missing descriptive material is

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'necessarily present'" in Rogers. Applicant respectfully requests provision of evidence supporting the assertion that "receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig. 7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added)."

To the extent that the present Office Action or any future Office Action intends to rely on inherency to support a claim rejection, Applicant respectfully traverses, respectfully requests provision of proper evidence supporting such rejection, and respectfully requests a detailed explanation of how the "missing descriptive material is necessarily present, not merely probably or possibly present", in any prior art reference cited to support such rejection.

b. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

c. Missing Claim Limitations

Claim 75 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "receiving from a subscriber unit a request for a list of available channels, the request being sent using HTTP protocol and in response to a subscriber requesting to view the list".

In addition, as amended, claim 75 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "the response managed via IP multicast capable TCP/IP software".

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, as attempted to be modified and/or combined, expressly or inherently teach every limitation of the independent claims, and consequently the Office Action fails to establish a *prima facie* case

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of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

d. No Reasonable Expectation of Success

The Office Action recites, regarding combining applied portions of Rogers and Day, at Pages 3-4, "it would have been obvious to an artisan to apply Day's teaching to Roger's system with the motivation being to enable user to access or schedule a multimedia data presentation in a more efficient and reliable manner"

One skilled in the art would not have a reasonable expectation of success regarding this combination. Specifically, Rogers states, at col. 9, lines 34-49:

[a] TV tuner board 464 can also be provided within broadband data switch 450 for connection to a cable television source. The input broadcast television signal is split into 5 separate signals, one for each tuner. In various embodiments, TV tuner board includes a signal splitter and 5 separate TV tuners each of which can independently tune to a different channel based on commands received from controller unit 457. These commands can be generated by individual users at teleconferencing stations such as those shown in FIG. 3. The TV signals can be forwarded to individual user's desktops over existing telephone lines through modem/diplexers 451 through 453. This allows each user to watch a broadcast or cable TV program at his desk over existing telephone lines and tune to any of various stations.

Day states, at col. 5, lines 48-65:

[n]etwork implementation 40 of the present invention can be used to deliver real-time (streamed) video/audio to any network-connected clients, including those on the Internet or an intranet, using standard LAN technology with TCP/IP and FTP. An Internet 'web browser' can be used to select a video for viewing (such as a short clip or commercials, or a full-length film). A variety of encoding formats can be supported for delivery of video streams, including RTP, TCP, HTTP and IP multicast. A presentation formatter server can provide presentation format pages to initiate a common gateway interface (CGI) program used to facilitate

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client requests. The presentation formats might include specific video selection (where the name or other access parameter of a desired file is already known), video-on-demand (allowing a client to select an asset from a dynamically generated list), and joining multicast sessions (previously scheduled video broadcasts to a group of clients, such as students enrolled in a distance-learning class).

The present Office Action presents no evidence that one having ordinary skill in the art would have found that the "TV tuner board 464" of Rogers would be able to recognize or operatively utilize "video streams, including RTP, TCP, HTTP and IP multicast" "formats" or "standard LAN technology with TCP/IP and FTP".

Thus, one skilled in the art would not have had a reasonable expectation of success in combining the applied portions of Rogers with the applied portions of Day to arrive at the claimed subject matter of claim 75.

e. Lack of Required Factual Evidence of Obviousness

Applicant respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art as required under *Graham*. The present Office Action fails to even identify what "the pertinent art" is. Moreover, the present Office Action fails to evidence the level of ordinary skill in the pertinent art.

Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and thereby, to provide a *prima facie* rejection under 35 U.S.C. 103.

f. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day and Rogers, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 75, in such a manner so as to arrive at the claimed subject matter of claim 75. Regarding the proffered combination of Day and Rogers the present Office Action states, at Pages 3 and 4 "it would have been obvious to an artisan to apply Day's teaching to Roger's system with the motivation being

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to enable user to access or schedule a multimedia data presentation in a more efficient and reliable manner.”

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a “rational underpinning, to combine the known elements in the fashion claimed in the patent at issue”. Moreover, no evidence is presented that this unsupported assertion was “known in the prior art”, as required by *KSR*. Applicant reiterates that under *KSR* “rejections on obviousness grounds cannot be sustained by mere conclusory statements”.

g. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 75 is respectfully requested.

52. Claim 76

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Hari, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 76, in such a manner so as to arrive at the claimed subject matter of claim 76. Regarding the proffered combination of Day, Rogers, and Hari the present Office Action states, at Pages 7-8, “it would have been obvious to an artisan to apply Hari’s teaching Rogers’s system with the motivation being to provide one user requesting a video.”

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a “rational underpinning, to combine the known elements in the fashion claimed in the patent at issue”. Moreover, no evidence is presented that this unsupported assertion was “known in the prior art”, as required by *KSR*. Applicant reiterates that under *KSR* “rejections on obviousness grounds cannot be sustained by mere conclusory statements”.

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For at least these reasons, a reconsideration and withdrawal of the rejection of claim 76 is respectfully requested.

53. Claim 77

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

Claim 77 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. PROGRAMS". Applicant respectfully submits that the applied portion of Rogers is silent regarding a "content provider". Accordingly, Applicant submits that Rogers does not teach, "wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**".

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 77, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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b. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 77 in such a manner so as to arrive at the claimed subject matter of claim 77.

c. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 77 is respectfully requested.

54. Claim 78

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 78 in such a manner so as to arrive at the claimed subject matter of claim 78.

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 78 is respectfully requested.

55. Claim 79

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

Claim 79 states, *inter alia*, "wherein the subscriber unit is connected to the computer system via a DSL connection."

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Hari, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the

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applied portions of the relied-upon references, that are used in rejecting claim 79, in such a manner so as to arrive at the claimed subject matter of claim 79. Regarding the proffered combination of Day, Rogers, and Hari the present Office Action states, at Page 9, “, it would have been obvious to an artisan to apply Hari’s teaching to Rogers’s system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed.” As a substantive matter, Applicant respectfully submits that this unfounded assertion appears to have no relevance to the claimed subject matter.

In addition, Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a “rational underpinning, to combine the known elements in the fashion claimed in the patent at issue”. Moreover, no evidence is presented that this unsupported assertion was “known in the prior art”, as required by *KSR*. Applicant reiterates that under *KSR* “rejections on obviousness grounds cannot be sustained by mere conclusory statements”.

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 79 is respectfully requested.

56. Claim 80

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

Claim 80 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, “wherein data for a channel is received at the computer system and forwarded to the subscriber unit”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. PROGRAMS” (emphasis added). Applicant respectfully submits that a “list” of “programs” does not teach a “channel” according to how the word “channel” would be construed “in light of the specification” “by one of ordinary skill in the art”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

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Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 80, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 80 in such a manner so as to arrive at the claimed subject matter of claim 80.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 80 is respectfully requested.

57. Claim 81

a. Inherency

The present Office Action states, regarding Rogers, that "receiving from a subscriber unit a request for a list of available channels (programs), the request including information identifying a subscriber (fig. 7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added)." *See*, Page 3. No evidence has been presented that the admittedly "missing descriptive material is 'necessarily present'" in Rogers. Applicant respectfully requests provision of evidence supporting the assertion that "receiving from a subscriber unit a request for a list of available

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channels (programs), the request including information identifying a subscriber (fig. 7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added)."

To the extent that the present Office Action or any future Office Action intends to rely on inherency to support a claim rejection, Applicant respectfully traverses, respectfully requests provision of proper evidence supporting such rejection, and respectfully requests a detailed explanation of how the "missing descriptive material is necessarily present, not merely probably or possibly present", in any prior art reference cited to support such rejection.

b. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

c. Missing Claim Limitations

Claim 81 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "receiving from a subscriber unit a request for a listing of available channels, the request including information identifying a subscriber". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. PROGRAMS" (emphasis added). Applicant respectfully submits that a "list" of "programs" does not teach "a listing of available channels" according to how the word "channel" would be construed "in light of the specification" "by one of ordinary skill in the art".

In addition, as amended, claim 81 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "the response managed via IP multicast capable TCP/IP software".

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Claim 81 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "sending to the subscriber unit a response with an indication of the identified channels, the response identifying a multicast group assigned to each identified channel".

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Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of the independent claims, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

d. No Reasonable Expectation of Success

The Office Action recites, regarding combining applied portions of Rogers and Day, at Pages 3-4, "it would have been obvious to an artisan to apply Day's teaching to Roger's system with the motivation being to enable user to access or schedule a multimedia data presentation in a more efficient and reliable manner"

One skilled in the art would not have a reasonable expectation of success regarding this combination. Specifically, Rogers states, at col. 9, lines 34-49:

[a] TV tuner board 464 can also be provided within broadband data switch 450 for connection to a cable television source. The input broadcast television signal is split into 5 separate signals, one for each tuner. In various embodiments, TV tuner board includes a signal splitter and 5 separate TV tuners each of which can independently tune to a different channel based on commands received from controller unit 457. These commands can be generated by individual users at teleconferencing stations such as those shown in FIG. 3. The TV signals can be forwarded to individual user's desktops over existing telephone lines through modem/duplexers 451 through 453. This allows each user to watch a broadcast or cable TV program at his desk over existing telephone lines and tune to any of various stations.

Day states, at col. 5, lines 48-65:

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[n]etwork implementation 40 of the present invention can be used to deliver real-time (streamed) video/audio to any network-connected clients, including those on the Internet or an intranet, using standard LAN technology with TCP/IP and FTP.

An Internet 'web browser' can be used to select a video for viewing (such as a short clip or commercials, or a full-length film). A variety of encoding formats can be supported for delivery of video streams, including RTP, TCP, HTTP and IP multicast. A presentation formatter server can provide presentation format pages to initiate a common gateway interface (CGI) program used to facilitate client requests. The presentation formats might include specific video selection (where the name or other access parameter of a desired file is already known), video-on-demand (allowing a client to select an asset from a dynamically generated list), and joining multicast sessions (previously scheduled video broadcasts to a group of clients, such as students enrolled in a distance-learning class).

The present Office Action presents no evidence that one having ordinary skill in the art would have found that the "TV tuner board 464" of Rogers would be able to recognize or operatively utilize "video streams, including RTP, TCP, HTTP and IP multicast" "formats" or "standard LAN technology with TCP/IP and FTP".

Thus, one skilled in the art would not have had a reasonable expectation of success in combining the applied portions of Rogers with the applied portions of Day to arrive at the claimed subject matter of claim 81.

e. Lack of Required Factual Evidence of Obviousness

Applicant respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art as required under *Graham*. The present Office Action fails to even identify what "the pertinent art" is. Moreover, the present Office Action fails to evidence the level of ordinary skill in the pertinent art.

Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and thereby, to provide a *prima facie* rejection under 35 U.S.C. 103.

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f. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day and Rogers, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 81, in such a manner so as to arrive at the claimed subject matter of claim 81. Regarding the proffered combination of Day and Rogers the present Office Action states, at Pages 3 and 4 "it would have been obvious to an artisan to apply Day's teaching to Roger's system with the motivation being to enable user to access or schedule a multimedia data presentation in a more efficient and reliable manner."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

g. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 81 is respectfully requested.

58. Claim 82

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 82, in such a manner so as to arrive at the claimed subject matter of claim 82. Regarding the proffered

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combination of Day, Rogers, and DeSimone the present Office Action states, at Page 11 "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system to provide conference over IP."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 82 is respectfully requested.

59. Claim 83

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Hari, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 83, in such a manner so as to arrive at the claimed subject matter of claim 83. Regarding the proffered combination of Day, Rogers, and Hari the present Office Action states, at Pages 7-8, "it would have been obvious to an artisan to apply Hari's teaching Rogers's system with the motivation being to provide one user requesting a video."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

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For at least these reasons, a reconsideration and withdrawal of the rejection of claim 83 is respectfully requested.

60. Claim 84

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

Claim 84 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. PROGRAMS". Applicant respectfully submits that the applied portion of Rogers is silent regarding a "content provider". Accordingly, Applicant submits that Rogers does not teach, "wherein available channels are provided to the computer system by receiving from a plurality of content providers **indications of channels that are made available by each content provider**". The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 84, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 84 in such a manner so as to arrive at the claimed subject matter of claim 84.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 84 is respectfully requested.

61. Claim 85

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

Claim 85 states, *inter alia*, yet the applied portions of Kalva fail to teach, "wherein an indication that a channel is made available by a content provider is sent using a session announcement protocol". Applicant respectfully submits that the applied portion of Kalva does not even mention a "session announcement protocol".

The applied portions of the remaining relied upon references fail to cure at least these deficiencies of the applied portions of Kalva.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 85, and consequently the Office Action fails to establish a *prima facie* case of obviousness.

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Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Hari, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 85, in such a manner so as to arrive at the claimed subject matter of claim 85. Regarding the proffered combination of Day, Rogers, and Hari the present Office Action states, at Page 8, "it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 85 is respectfully requested.

62. Claim 86

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Hari, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the

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applied portions of the relied-upon references, that are used in rejecting claim 86, in such a manner so as to arrive at the claimed subject matter of claim 86. Regarding the proffered combination of Day, Rogers, and Hari the present Office Action states, at Page 9, "it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 86 is respectfully requested.

63. Claim 87

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 87, in such a manner so as to arrive at the claimed subject matter of claim 87. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 11, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is

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presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 87 is respectfully requested.

64. Claim 88

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Alexanders, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 88, in such a manner so as to arrive at the claimed subject matter of claim 88. Regarding the proffered combination of Day, Rogers, and Alexanders the present Office Action states, at Page 6, "it would have been obvious to provide data over ATM network unicastly."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 88 is respectfully requested.

65. Claim 89

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

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b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 89 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, “wherein the channel source address is an ATM virtual path and transmission circuit”.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 89, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Alexanders, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 89, in such a manner so as to arrive at the claimed subject matter of claim 89. Regarding the proffered combination of Day, Rogers, and Alexanders the present Office Action states, at Page 6, “it would have been obvious to provide data over ATM network unicastly.”

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a “rational underpinning, to combine the known elements in the fashion claimed in the patent at issue”. Moreover, no evidence is presented that this unsupported assertion was “known in the prior art”, as required by *KSR*. Applicant reiterates that under *KSR* “rejections on obviousness grounds cannot be sustained by mere conclusory statements”.

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d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 89 is respectfully requested.

66. Claim 90

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 90, in such a manner so as to arrive at the claimed subject matter of claim 90. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 12, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide a conference to only the requested client."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 90 is respectfully requested.

67. Claim 91

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or

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reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 91 in such a manner so as to arrive at the claimed subject matter of claim 91.

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 91 is respectfully requested.

68. Claim 92

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

Claim 92 states, *inter alia*, "wherein the subscriber unit is connected to the computer system via a DSL connection." The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and Hari, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 92, in such a manner so as to arrive at the claimed subject matter of claim 92. Regarding the proffered combination of Day, Rogers, and Hari the present Office Action states, at Page 9, "it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed." As a substantive matter, Applicant respectfully submits that this unfounded assertion appears to have no relevance to the claimed subject matter.

In addition, Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 92 is respectfully requested.

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69. Claim 93**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

Claim 93 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "wherein an available channel is a channel whose data is currently being multicasted". The present Office Action attempts, at Page 5, to apply a nonexistent portion of Rogers in the rejection of claim 93 ("page 310, right column, second paragraph"). Applicant respectfully submits that the present Office Action fails to provide any evidence that any applied portion of any relied upon reference teaches "wherein an available channel is a channel whose data is currently being multicasted".

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 93, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 93 in such a manner so as to arrive at the claimed subject matter of claim 93.

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d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 93 is respectfully requested.

70. Claim 94

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. *See* MPEP 707.07(d). For example, claim 94 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, “wherein the subscriber is identified using a media access control address”.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, as **attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 94, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 94, in

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such a manner so as to arrive at the claimed subject matter of claim 94. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 11, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 94 is respectfully requested.

71. Claim 95

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

The Office Action appears to improperly group claims together in a common rejection without any showing that the rejection is equally applicable to all claims in the group. That is never appropriate. See MPEP 707.07(d). For example, claim 95 states, *inter alia*, yet the present Office Action fails to even allege that any applied portion of any relied upon reference teaches, "wherein the subscriber is identified using an IP address".

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, as

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attempted to be modified and/or combined, expressly or inherently teach every limitation of claim 95, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 95, in such a manner so as to arrive at the claimed subject matter of claim 95. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 11, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 95 is respectfully requested.

72. Claim 96

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

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b. Missing Claim Limitations

Claim 96 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, “providing a subscribed channel list for the subscriber that indicates channels which the subscriber is permitted to access”. Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, “SWITCH SENDS LIST OF AVAIL. **PROGRAMS**” (emphasis added). Applicant respectfully submits that a “list” of “programs” does not teach “channel list” according to how the word “channel” would be construed “in light of the specification” “by one of ordinary skill in the art”. Moreover, the applied portion of Rogers is silent regarding any “subscribed” “list” whatsoever.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 96, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 96 in such a manner so as to arrive at the claimed subject matter of claim 96.

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d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 96 is respectfully requested.

73. Claim 97

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

b. Missing Claim Limitations

Claim 97 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, "wherein data for a channel is received at the computer system and forwarded to the subscriber unit". Instead, Rogers allegedly illustrates, at Fig. 7a, step 702, "SWITCH SENDS LIST OF AVAIL. PROGRAMS" (emphasis added). Applicant respectfully submits that a "list" of "programs" does not teach a "channel" according to how the word "channel" would be construed "in light of the specification" "by one of ordinary skill in the art".

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 97, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

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c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 97 in such a manner so as to arrive at the claimed subject matter of claim 97.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 97 is respectfully requested.

74. Claim 98

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 98, in such a manner so as to arrive at the claimed subject matter of claim 98. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 13, "it would have been obvious to an artisan to apply Acharya's teaching to Rogers's system with the motivation being to provide transmits data as a series of variable length packets, each having a circuit number that identifies its source and destination address."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

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For at least these reasons, a reconsideration and withdrawal of the rejection of claim 98 is respectfully requested.

75. Claim 99

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combinations of Day, Rogers, and DeSimone, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references, that are used in rejecting claim 99, in such a manner so as to arrive at the claimed subject matter of claim 99. Regarding the proffered combination of Day, Rogers, and DeSimone the present Office Action states, at Page 12, "it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide a conference to only the requested client."

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that this unsupported assertion was "known in the prior art", as required by *KSR*. Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 99 is respectfully requested.

76. Claim 100

a. *Prima Facie* Criteria

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a prima facie case of obviousness.

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b. Missing Claim Limitations

Claim 100 states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Rogers teach, “wherein the request is sent in response to the subscriber requesting to view the listing”. Since claim 100 depends from claim 81, “the listing” is a “listing of available channels”. Instead of teaching this claimed subject matter, Rogers allegedly illustrates, at Fig. 7a, step 706, “**SELECTED PROGRAM DISPLAYED IN WINDOW**” (emphasis added). Applicant respectfully submits that a “program” as recited in step 706 does not teach a “listing of available channels”.

The applied portions of Day fail to cure at least these deficiencies of the applied portions of Rogers.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, as **attempted to be modified and/or combined**, expressly or inherently teach every limitation of claim 100, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

c. Lack of Evidence of a Reason to Combine References

The present Office Action fails to provide evidence of obviousness as required under *KSR*. For example, regarding the proffered combination of Rogers and Day no evidence or reasoning is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 100 in such a manner so as to arrive at the claimed subject matter of claim 100.

d. Conclusion

For at least these reasons, a reconsideration and withdrawal of the rejection of claim 100 is respectfully requested.

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II. Next Office Action

If an Office Action fails to set forth sufficient facts to provide a *prima facie* basis for the rejections, any future rejection based on the applied reference will necessarily be factually based on an entirely different portion of that reference, and thus will be legally defined as a “new grounds of rejection.” Consequently, any Office Action containing such rejection can not properly be made final. *See, In re Wiechert*, 152 USPQ 247, 251-52 (CCPA 1967) (defining “new ground of rejection” and requiring that “when a rejection is factually based on an entirely different portion of an existing reference the appellant should be afforded an opportunity to make a showing of unobviousness vis-a-vis such portion of the reference”), and *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967) (the USPTO “has the initial duty of supplying the factual basis for its rejection”). For at least the reasons cited, *supra*, regarding the lack of a *prima facie* rejection of any of claims 25-100, the next Office Action regarding the present application should not be final.

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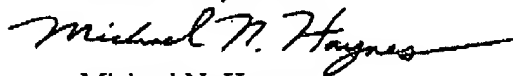
CONCLUSION

It is respectfully submitted that the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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